

Amendments to the Drawings:

Attached hereto is a replacement sheet of drawings containing revised Figs. 1 - 3 containing labels.

REMARKS/ARGUMENTS

Re-examination and favorable reconsideration in light of the above amendments and the following comments are respectfully requested.

Claims 1 - 11 are pending in the application. Currently, all claims stand rejected.

In the office action mailed April 24, 2009, the Examiner rejected claims 1 - 11 on the ground of nonstatutory double patenting over claims 1 - 14 of U.S. Patent No. 7,077,244. In making this rejection, the Examiner erroneously bases the rejection on the statement that the subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent. As set forth in MPEP 804, the disclosure of the patent which allegedly forms the basis for the double patenting rejection may not be used as prior art. Thus, the issue presented in the double patenting rejection is solely whether the claims in this case are an obvious variant of the claimed subject matter in the '244 patent. In making an obviousness type double patenting rejection, the Examiner is required to make a *Graham v. John Deere* type analysis in which the Examiner determines the scope and content of the patent claims relative to the claim in the pending application at issue; determine the differences between the scope and content of the patent claim and the claim in the application; determine the level of skill in the art; and evaluate any objective indicia of non-obviousness. See MPEP 804. The Examiner has not made any such analysis and thus, has not made out a prima facie case of obviousness type double patenting. The fact of the matter is that there are significant differences between

the claims in the instant application and the claims in the '244 patent. Most notably, the claims in the instant application call for a positioning system in which a plurality of transponder modules emit a light signal; at least one transponder module receive the light signal; and means for processing the received light signal to determine a position of the at least one transceiver module. The claims in the '244 patent do not call for emitting a light signal, receiving the light signal, and then using the received light signal to determine a position of the at least one transceiver module. As mentioned before, the Examiner is unable to use the disclosure of the '244 patent against Applicants. Thus, the Examiner has not shown that the missing subject matter would be rendered obvious by any prior art. For these reasons, the rejection on double patenting grounds fails and should be withdrawn.

Further, the Examiner has taken the position that the claims of this application conflict with the claims 1 - 17 of pending Application No. 10/576,836. This position is in error because the claims in the instant application are not identical with the claims in the '836 application. There are differences in claim language and claim scope. If the Examiner is going to make a double patenting rejection, then the Examiner should provide Applicants with a *Graham v. John Deere* analysis so Applicants can understand more clearly the Examiner's position.

The objection to the Abstract and the drawings has been duly noted and appropriate correction has been made. The Examiner is hereby requested to approve the drawing corrections in the attached replacement sheets.

The instant application is believed to be in condition for allowance. Such allowance is respectfully solicited.

Should the Examiner believe an additional amendment is needed to place the case in condition for allowance, the Examiner is hereby invited to contact Applicants' attorney at the telephone number listed below.

No fee is believed to be due as a result of this response. Should the Director determine that a fee is due, he is hereby authorized to charge said fee to Deposit Account No. 02-0184.

Respectfully submitted,
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